

REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on August 25, 2004, and the references cited therewith.

Claims 13 and 16 are amended, no claims are canceled, and no claims are added; as a result, claims 1-20 are now pending in this application.

Applicant respectfully submits that claims 13 and 16 do not introduce any new subject matter and are intended to cover additional claimable subject matter fully supported by the originally filed specification.

§103 Rejection of the Claims

Claims 1-20 were rejected under 35 USC §103(a) as being unpatentable over Autry, et al. (U.S. Patent No. 5,724,106) in view of Olsen, et al. (6,137,479).

In the Applicant's previous response (filed April 22, 2004.), Applicant amended various independent claims to include a language relating to frequency of use. Specifically, in the previous response, the Applicant amended independent claims 1, 13, and 16 to include the following language:

a number of control activators, each activator located on the pointing device in relation to an expected frequency of use.

In the present office action, dated August 25, 2004, the Examiner included a "Response to Arguments" stating that although the Autry et al. and Olsen et al. references do not disclose where the activators are located in certain areas with respect to frequency of use, it would have been obvious to one of ordinary skill in the art that the placement of the plurality of activators are determined by usefulness.

The Examiner further stated that to one skilled in the art, the Autry et al. reference would not place the trackball in a location which is not useful to the user such as the underside of the controller. In other words, the Examiner's response includes an argument based upon placement of a plurality of activators being useful and not placement of the control activators based upon a frequency of use.

The Applicant respectfully submits that the Examiner's reply to the Applicant's previous response dated April 22, 2004 was not responsive to the added claim language regarding frequency of use. The Examiner's stated response

including “usefulness” is different than the claimed language of: a number of control activators, each activator located on the pointing device in relation to an expected frequency of use. (See Applicant’s specification at Page 10, Paragraph [0037] “Preferably, the location of a particular control activator relates to the expected frequency of use of the activator.”).

Location of a control activator based on usefulness is different that location of an activator based upon the frequency of use of the activator. Indeed, the Examiner is correct in that the trackball of the Autry et al. reference would not be placed on the underside of the control activator because it would not be useful. However, as applied to the Applicant’s disclosure, a control activator, that is not frequently used may be placed on the underside of the controller, for example, in a situation where that control activator is seldom used.

The Autry et al. reference appears to teach a remote control device capable of controlling other devices through a computer. Control of the other devices includes a handheld remote that sends control signals to the computer system. The computer system then routes the control signals to the appropriate devices.

In contrast, Applicant’s independent claims 1, 13, and 16, as amended, recite, besides other things:

Independent claim 1

a number of control activators, each activator located on the pointing device in relation to an expected frequency of use

Independent claim 16

a number of control activators, each activator located on the pointing device in relation to an expected frequency of use and penalty for accidental use

Independent claim 13

each of the number of control activators is located on the pointing device in relation to an expected frequency of use and penalty for accidental use

Support for the amended claim language of claims 13 and 16 can be found on Page 10, Paragraph [0037] of the Applicant’s specification. For example, Applicant’s specification at page 10, paragraph 37 states that: “PC activator 460 is

located at the top of the mouse whereby the chances of accidental depression of activator 460 are greatly reduced, whereas copier activator 440 is located at the left-hand side of device 120 where the chances of accidental depression are slightly higher (the consequences of accidentally turning off computer device 110 normally being greater than the consequences of accidentally turning off a copy machine communicatively coupled thereto).”

From the Applicant's review of the Autry et al. reference, Applicant is unable to locate any teaching of the Applicant's claimed features and functionality. For example, the Applicant is unaware of part of the reference that teaches that, within a pointing device, features and functionality provide for “a number of control activators, each activator located on the pointing device in relation to an expected frequency of use”, as provided in claims 1 and 16, with similar language provided in claim 13. Nor can Applicant locate any teaching of “each activator located on the pointing device in relation to an expected frequency of use penalty for accidental use”, as recited in claim 16, with similar language in claim 13.

The Olsen et al. reference does not cure the deficiencies of the Autry et al. reference. The Olsen et al. reference appears to teach a programmable computer mouse having conventional computer mouse components including an LCD display on the mouse. The Olsen et al. reference does not teach or suggest a number of control activators, each activator located on the pointing device in relation to an expected frequency of use and penalty for accidental use. Nor does the Olsen et al. reference teach or suggest that each activator is located on the pointing device in relation to an expected frequency of use and penalty for accidental use.

Accordingly, Applicant respectfully submits that the Applicant's claim language including “frequency of use” is not the same as “usefulness” of a particular placement of a control activator. In addition, Applicant's claim language including “penalty for accidental use” is neither taught nor suggested by the Autry et al. and Olsen et al. references.

The Applicant respectfully submits that neither the Autry et al. reference nor the Olsen et al. reference teaches or suggests, either independently or in combination, a number of control activators, each activator located on the pointing device in relation to an expected frequency of use and penalty for accidental use.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the §103 rejection of independent claims 1, 13, and 16, as well as those claims which depend therefrom.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (360) 212-8052 to facilitate prosecution of this matter.

At any time during the pendency of this application, please charge any additional fees or credit overpayment to the Deposit Account No. 08-2025.

CERTIFICATE UNDER 37 CFR §1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS AMENDMENT Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450 on this 4th day of November, 2004.

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